

Exhibit C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

GLORIA ARTHUR, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

THE STANDARD FIRE INSURANCE
COMPANY and THE TRAVELERS
INDEMNITY COMPANY,

Defendants.

CIVIL ACTION NO. 09-7332

JUDGE CARL J. BARBIER

**JOINT MOTION SEEKING ENTRY OF PRELIMINARY APPROVAL ORDER
CERTIFYING SETTLEMENT CLASS, APPROVING PROPOSED SETTLEMENT, AND
GRANTING RELATED RELIEF**

NOW INTO COURT, through undersigned counsel, comes the proposed Settlement Class Representative,¹ Gloria Arthur, 11378 Hampton Court, Denham Springs, LA 70726, individually and on behalf of the proposed Settlement Class ("Plaintiffs"), and The Standard Fire Insurance Company and The Travelers Indemnity Company ("Defendants" and, together with Plaintiffs, the "Parties"), who respectfully move this Court to enter a preliminary order certifying a settlement class under Federal Rule of Civil Procedure 23(a) and 23(b)(3), to approve the proposed settlement under Federal Rule of Civil Procedure 23(e), and to provide additional relief in furtherance thereof.

¹ Except as otherwise expressly provided below or as the context otherwise requires, all capitalized terms used in this Joint Motion Seeking Entry of Preliminary Approval Order Certifying Settlement Class, Approving Proposed Settlement, and Granting Related Relief; and Memorandum in Support Thereof (the "Joint Motion") shall have the meanings and/or definitions given them in the Settlement Agreement and Release, the original of which, together with all exhibits, is attached to this Joint Motion as *in globo* Exhibit A.

The Parties pray that, after due proceedings are had, the Court grant their Joint Motion Seeking Entry of Preliminary Approval Order Certifying Settlement Class, Approving Proposed Settlement, and Granting Related Relief, and the Court accordingly enter a **Preliminary Approval and Notice Order** in substantially the form set forth in Exhibit D to the Class Settlement Agreement, including provision of the following relief:

- i. Preliminary certification, with the express reservation to the Class of all objections to certification of the Settlement Class and the Settlement Agreement and Release;
- ii. Preliminary approval of the Settlement Agreement and Release, subject to both notice to the Class and a Final Approval Hearing, as fair and reasonable under Federal Rule of Civil Procedure 23(e);
- iii. Approval of Gloria Arthur to serve as provisional representative for the Settlement Class;
- iv. Approval of Calvin C. Fayard Jr., N. Frank Elliot III, Frank C. Dudenhefer, Wanda Edwards, and Joseph M. Bruno to serve as Class Counsel; and
- v. Approval of the form and content of the Detailed and Summary Notices as well as the method for notifying the putative Settlement Class as satisfying the requirements of due process and constituting the best notice practicable under the circumstances, and constituting due and sufficient notice to all potential members of the Settlement Class.

The Parties further request that the Court schedule the Final Approval Hearing, to be conducted in the United States District Court for the Eastern District of Louisiana, Section "S", New Orleans, Louisiana and that the Court set a deadline of not less than the 40th calendar day after the Notice Date for objections to (a) whether the Settlement Class should be certified pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure; (b) whether the proposed settlement should be given approval as fair, reasonable and adequate, and (c) whether the Final Order and Judgment shall be entered. The Parties request that the Final Approval Hearing be scheduled not less than 45 calendar days after the objection deadline.

Thereafter, after due notice and an opportunity for all class members and parties in interest to object and be heard at the Final Approval Hearing, the Parties request that the Court enter a **Final Order and Judgment** in substantially the form set forth in Exhibit I to the Settlement Agreement and Release, providing the relief requested therein, including:

- i. Confirming the preliminary certification of the Settlement Class and certifying the Settlement Class for settlement purposes only, pursuant to the Settlement Agreement and Release as well as Federal Rule of Civil Procedure 23(b)(3);
- ii. Entering final approval of the Settlement Agreement and Release and the settlement contained therein, including (a) any amendments or corrections thereto, and (b) all attached exhibits pursuant to applicable law, including Federal Rule of Civil Procedure 23(a), (b)(3), and (e);
- iii. Confirming the preliminary approval of the Class Representatives and Class Counsel; and
- iv. Overruling the objections made to certification of the Settlement Class and/or approval of the Settlement Agreement and Release.

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The parties further request all additional relief as set forth in the [Proposed] Preliminary approval and Notice Order, in the [Proposed] Final Order and Judgment, and/or as requested herein, together with all relief warranted by law or equity.

Dated: March 2, 2010

Respectfully submitted,

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INDEMNITY COMPANY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

GLORIA ARTHUR, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

THE STANDARD FIRE INSURANCE
COMPANY and THE TRAVELERS
INDEMNITY COMPANY

Defendants.

CIVIL ACTION NO. 09-7332

JUDGE CARL J. BARBIER

**JOINT MEMORANDUM IN SUPPORT OF MOTION SEEKING ENTRY OF
PRELIMINARY APPROVAL ORDER CERTIFYING SETTLEMENT CLASS,
APPROVING PROPOSED SETTLEMENT, AND GRANTING RELATED RELIEF.**

The proposed Settlement Class Representative,¹ Gloria Arthur, 11378 Hampton Court, Denham Springs, LA 70726, individually and on behalf of the proposed Settlement Class (“Plaintiffs”), and The Standard Fire Insurance Company and The Travelers Indemnity Company (“Defendants” and, together with Plaintiffs, the “Parties”), respectfully ask, for the reasons set forth below, that this Court preliminarily, and thereafter on a final basis, enter a preliminary order certifying a settlement class under Federal Rule of Civil Procedure 23(a) and 23(b)(3), to approve the proposed settlement under Federal Rule of Civil Procedure 23(e), and to provide additional relief in furtherance thereof.

¹ Except as otherwise expressly provided below or as the context otherwise requires, all capitalized terms used in this Joint Motion Seeking Entry of Preliminary Approval Order Certifying Settlement Class, Approving Proposed Settlement, and Granting Related Relief; and Joint Memorandum in Support Thereof (the “Joint Motion”) shall have the meanings and/or definitions given them in the Settlement Agreement and Release, the original of which, together with all exhibits, is attached to this Joint Motion as *in globo* Exhibit A.

JURISDICTION

1. This Court has jurisdiction to consider this Joint Motion and the relief requested herein pursuant to 28 U.S.C. § 1332(d). Venue is proper before this Court pursuant to 28 U.S.C. § 1391(a).

REQUEST FOR PRELIMINARY APPROVAL

2. Initially, the Parties seek only preliminary certification of the Settlement Class and preliminary approval of the Settlement Agreement and Release. This first step is typically an informal process. *See* 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.24, at 36-37 (4th ed. 2002) (“Usually the court will informally review these proposed settlement papers with counsel and then direct that notice of the proposed settlement and the hearing thereon be issued to all class members.”).

3. Certification of settlement classes and certification of litigation classes “pose different issues.” *In re Bridgestone/Firestone, Inc.*, 333 F.3d 763, 766 (7th Cir. 2003). A court asked to certify a class for settlement purposes only “need not inquire whether the case, if tried, would present intractable management problems.” *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997). “The law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.” *In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995).

4. When presented with a class action settlement proposal, “a court often will conduct a preliminary review of [the] proposed settlement before ordering that notice be sent to the class.” 5 James Moore et al., *Moore’s Federal Practice* § 23.165[2] (3d ed. 2007). As a result of this preliminary inquiry, “the court may give the parties an opportunity to withdraw it and save themselves the time and expense of giving notice to the class” of a proposed settlement that the court finds is “obviously unfair.” *Id.*; *see also Bennett v. Behring Corp.*, 737 F.2d 982, 986-87 (11th Cir. 1984) (affirming district court’s preliminary approval of class action settlement); *Hickerson v. Velsicol Chem. Corp.*, 121 F.R.D. 67, 69 (N.D. Ill. 1988) (“Before requiring

notification of the absent class members, the proposed settlement must be preliminarily approved” and “a final determination as to the necessity of a [fairness] hearing will only be made after examining any written objections as to settlement that may be filed”); *see generally* Manual for Complex Litigation § 21.6, at 308 (4th ed. 2004) (outlining procedures for preliminary approval of class action settlements). For the reasons outlined below, preliminary certification of the Settlement Class, preliminary approval of the Settlement Agreement and Release, and the grant of the relief requested in this Joint Motion on a preliminary and, after notice to the Settlement Class, final basis is appropriate.

RELIEF REQUESTED

5. By this Joint Motion, the Parties respectfully request that the Court, reserving the right of Class Members to object and be heard, preliminarily certify a Settlement Class (as defined in ¶ 7 below) and approve the Settlement Agreement and Release, designate representatives of the Settlement Class, appoint counsel to represent the Settlement Class, authorize the Parties to provide the Class Members with appropriate notice of a Final Approval Hearing in a form and manner approved by this Court, and thereafter grant final approval of the settlement under Rule 23 of the Federal Rules of Civil Procedure, and provide the other relief requested herein.

FACTUAL BACKGROUND AND PROPOSED CLASS

6. The Parties have entered into a Settlement Agreement and Release in the above-captioned matter. This case arises out of allegations that Travelers mishandled claims asserted by policyholders for loss or damage arising out of Hurricane Katrina and Hurricane Rita. Travelers denies any wrongdoing or liability whatsoever.

7. As set forth in the Settlement Agreement and Release, the Parties have agreed to and do hereby propose the following Settlement Class for certification by the Court for settlement purposes only, pursuant to the Settlement Agreement and Release and Federal Rule of Civil Procedure 23:

All persons, including but not limited to their assignees, subrogees, and lienholders (including the State of Louisiana), who sustained any loss or damage of any kind, arising in any way out of damage, destruction, or harm to property in the State of Louisiana related in any way to Hurricanes Katrina and/or Rita, and who, at the time of the loss, had any rights under a policy of insurance from Travelers. Loss or damage includes but is not limited to: (1) loss or damage to real or personal property; (2) the incurring of additional living or business expenses; or (3) the loss of any business or other income. The class excludes all persons, other than the State of Louisiana as plaintiff in the Road Home Litigation, who have a suit pending against Travelers as of the date of the Preliminary Approval Order related in any way to losses stemming from Hurricanes Katrina and/or Rita. The class also excludes class counsel, members of the judiciary, their administrative staff and any other personnel who may cause a member of the Louisiana bench to be unable to preside over this action. Notwithstanding the above, the class does not include the State of Louisiana as assignee of claims by non members of the class.

As used in the definition of the proposed Settlement Class (and in the Settlement Agreement and Release), the following terms have the indicated meanings:

(a) The term “Hurricane Katrina” shall mean the tropical cyclone named “Hurricane Katrina” by the National Weather Service’s National Hurricane Center which made landfall in Louisiana on or about August 29, 2005 including, but not limited to its classification as a tropical depression, storm, hurricane and/or weather event and any and all effects due to, caused by, or relating to Hurricane Katrina (including, but not limited to, water damage from any levee or canal failures, or any other flooding during or following the hurricane winds, as well as any vandalism, fires, and/or looting during or following the hurricane) regardless of whether same occurred prior to, concurrently with, or following Hurricane Katrina’s landfall including, but not limited to, storm surge, flooding, rainfall, lightning, wind and/or tornados.

(b) The term “Hurricane Rita” shall mean the tropical cyclone named “Hurricane Rita” by the National Weather Service’s National Hurricane Center which made landfall in Louisiana on or about September 24, 2005 including, but not limited to, its classification as a tropical depression, storm, hurricane and/or weather event and any and all effects due to, caused by, or relating to Hurricane Rita (including, but not limited to, water damage from any levee or canal failures, or any other flooding during or following the hurricane winds, as well as any

vandalism, fires, and/or looting during or following the hurricane) regardless of whether same occurred prior to, concurrently with, or following Hurricane Rita's landfall including, but not limited to, storm surge, flooding, rainfall, lightning, wind and/or tornados.

(c) "Travelers" means The Travelers Indemnity Co. and its present and former subsidiaries, affiliates, divisions, associates, agents, successors, predecessors, assignors, assignees, and/or assigns and each of their respective present, former or future, officers, directors, shareholders, agents and employees. The Travelers companies covered by this settlement include the following companies: The Travelers Indemnity Company; The Charter Oak Fire Insurance Company; The Phoenix Insurance Company; The Travelers Indemnity Company of Connecticut; The Travelers Indemnity Company of America; Travelers Property Casualty Company of America; The Travelers Home and Marine Insurance Company; TravCo Insurance Company; Nipponkoa Insurance Company, Limited (U.S. Branch); Travelers Commercial Casualty Company; Travelers Casualty and Surety Company; The Standard Fire Insurance Company; The Automobile Insurance Company of Hartford, Connecticut; Travelers Casualty Insurance Company of America; Farmington Casualty Company; Travelers Casualty and Surety Company of America; Travelers Commercial Insurance Company; Travelers Casualty Company of Connecticut; Travelers Property Casualty Insurance Company; Select Insurance Company; Gulf Underwriters Insurance Company; Gulf Insurance Company; Commercial Guaranty Insurance Company; Travelers Excess and Surplus Lines Company; Athena Assurance Company; Discover Property & Casualty Insurance Company; Fidelity and Guaranty Insurance Company; Fidelity and Guaranty Insurance Underwriters, Inc.; Northland Casualty Company; Northland Insurance Company; St. Paul Insurance Company; St. Paul Fire and Marine Insurance Company; St. Paul Guardian Insurance Company; St. Paul Medical Liability Insurance Company; St. Paul Mercury Insurance Company; St. Paul Protective Insurance Company; United States Fidelity and Guaranty Company; American Equity Insurance Company; Discover Specialty Insurance Company; Northfield Insurance Company; GeoVera Insurance Company; Seaboard Surety Company; American

Continental Insurance Company; Atlantic Insurance Company; Titan Indemnity Company; USF&G Specialty Insurance Company; and St. Paul Surplus Lines Insurance Company.

8. The purposes and intentions of all parties to this proposed settlement are, *inter alia*, (a) to settle the Released Claims of the Class Members against the Released Entities, as all such terms are defined in the Settlement Agreement and Release; (b) to provide a fund for the benefit of Class Members; (c) to terminate and extinguish any liability of the Released Entities for all Released Claims of the Class Members or other Releasers; and (d) to dismiss on the merits and with prejudice all Claims asserted in this litigation.

9. In conformity with Federal Rule of Civil Procedure 23(e)(3), the Parties advise that they have entered into the Settlement Agreement and Release and, a Supplemental Agreement Regarding Opt-Outs.

THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS

10. Travelers does not concede that the requirements of Rule 23(a) could be satisfied in a litigation class and expressly reserve all rights and defenses in that regard. However, the Plaintiffs, in support of this Joint Motion, below address the requirements of numerosity, commonality, typicality, and adequacy of representation under Rule 23(a). Specifically, Plaintiffs assert that:

A. The Proposed Settlement Class Meets the Requirements of Rule FRCP 23(a)

11. Numerosity: Numerosity is established in that the size of the proposed class is sufficiently large to make joinder impractical, given the relevant circumstances. Fed. R. Civ. P. 23(a); *see, e.g., Turner v. Murphy Oil USA, Inc.*, 234 F.R.D. 597 (E.D. La. 2006) (finding numerosity requirement met in class action suit arising from post-Hurricane Katrina oil spill where class members were dispersed throughout the country and the number of impacted properties exceeded 1,800). In this settlement, the proposed class encompasses thousands of policyholders who have asserted claims or potential claims against Travelers arising from Hurricanes Katrina and Rita. Thus, the Rule 23(a)(1) numerosity requirement has been met.

12. Commonality: Generally, the commonality requirement is met provided that at least one common question of law or fact exists. *See* Fed. R. Civ. P. 23(a)(2); *James v. City of Dallas*, 254 F.3d 551, 570 (5th Cir. 2001). Here, there are many common questions of law and fact. For example, the insurance policies have similar or identical language, which raises common issues of contract interpretation and the application of state law to the policies. Moreover, application of Louisiana law to Travelers' conduct raises common questions. Finally, the efficient proximate cause of the inundation of the Policyholders' properties, including the fault of third parties, and the propriety of the declaratory relief are common questions across the putative class. Such common questions satisfy Rule 23(a)(2)'s commonality requirement.

13. Typicality: The proposed Settlement Class Representative's claims arise from the same course of conduct and share the same legal theory as the claims of the members of the Settlement Class. Furthermore, the proposed Settlement Class Representative will advance the interests of all class members. The proposed Settlement Class Representative's claims are typical of those of the proposed Settlement Class and satisfy Rule 23(a)(3).

14. Adequacy: The proposed Settlement Class Representative asserts claims representative of the claims of the entire Settlement Class with regard to claims arising out of Hurricanes Katrina and/or Rita. As such, even though the claims may not be identical to every claim of every putative Settlement Class member, the Settlement Class Representative can adequately represent the putative Settlement Class. The Declarations of the proposed Settlement Class Representative is attached as *in globo* Exhibit B.

15. The "adequacy" factor also considers Class Settlement Counsel. In this case, Class Settlement Counsel regularly engage in complex litigation similar to the present case and have dedicated substantial resources to the prosecution of this matter. There is no conflict of interest between the Settlement Class and Class Settlement Counsel. The adequacy requirement is satisfied. The Affidavits of Class Settlement Counsel are attached as *in globo* Exhibit C.

B. The Proposed Settlement Class Meets the Requirements of Rule 23(b)(3)

16. Once the subsection (a) prerequisites are satisfied, Federal Rule of Civil Procedure 23(b)(3) provides that a class action can be maintained where the questions of law and fact common to members of the class predominate over any questions affecting only individuals, and the class action mechanism is superior to the other available methods for the fair and efficient adjudication of the controversy. Fed. R. Civ. P. 23(b)(3); *Steering Committee v. Exxon Mobil Corp.*, 461 F.3d 598, 601 (5th Cir. 2006). In this case and in the context of the proposed settlement, common issues of fact and law predominate. With respect to the proposed class, common questions of fact and law predominate over the questions affecting only individual class members, particularly with respect to matters of policy interpretation, application of Louisiana law to the subject policies, application of Louisiana law to Travelers' conduct, the history and significance of specific policy provisions, Travelers' policies, practices, and procedures as they apply to the class' claims, the efficient proximate cause of the inundation of the Policyholders' properties, including the fault of third parties, the propriety of the declaratory relief sought by the class, and whether the class members' claims are time-barred.

One common issue of law that predominates in this case is whether the claims of the Settlement Class Representative and all members of the proposed Settlement Class are untimely. This suit was filed after the expiration of the deadlines for filing suit as provided in the contractual suit limitation provisions in the applicable policies and by La. Acts 2006, No. 802. All of the claims at issue are thus potentially time-barred unless the contractual suit limitation periods were tolled by the pendency of other putative class actions. *See Dixey v. Allstate Ins. Co.*, Civ. A. No. 09-4443, slip op. (E.D. La. 1/8/10) (Feldman, J.).

In addition, the instant class action is superior to any other method available to fairly, adequately, and efficiently resolve the Settlement Class members' claims. Absent a class action, most members of the class would find the cost of litigating their claims to be prohibitive and such multiple individual actions would be judicially inefficient. Also, because the parties have agreed to settle the action, the Court need not consider issues of manageability relating to trial.

See Amchem, 521 U.S. at 620 (citation omitted) (“[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial”). Accordingly, common questions predominate and a class action is the superior method of adjudicating this controversy.

**SUBJECT TO A FINAL APPROVAL HEARING, THE COURT SHOULD APPROVE
THE SETTLEMENT UNDER FEDERAL RULE OF CIVIL PROCEDURE 23(E)**

17. Upon preliminarily certifying the Settlement Class, the Court should also conduct a preliminary inquiry and determine that the settlement is fair, reasonable and adequate pursuant to Federal Rule of Civil Procedure 23(e) and the fairness and adequacy factors of this Circuit. Under Fifth Circuit law, “[t]he gravamen of an approvable proposed settlement is that it be ‘fair, adequate, and reasonable and is not the product of collusion between the parties.’” *Newby v. Enron Corp.*, 394 F.3d 296, 301 (5th Cir. 2004). The following factors must be considered: “(1) evidence that the settlement was obtained by fraud or collusion; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the litigation and available discovery; (4) the probability of plaintiffs’ prevailing on the merits; (5) the range of possible recovery and certainty of damages; and (6) the opinions of class counsel, class representatives, and absent class members.” *Id.* The Fifth Circuit has further stated that “formal discovery is not necessary as long as (1) the interests of the class are not prejudiced by the settlement negotiations and (2) there are substantial factual bases on which to premise settlement.” *Id.* at 306.

- a. Comparison of Settlement with Likely Result of Litigation: Although members of the Settlement Class have consistently asserted their confidence in the strength of their case, this is complex litigation for which the outcome is uncertain and unpredictable. Travelers contends that there are significant legal barriers to the Settlement Class members’ successful litigation of their claims, whether individually or on a classwide basis. These barriers include proving liability as to Travelers. The Settlement Class Representative disputes these points.

Nevertheless, in entering into the negotiations that produced the settlement at issue here, both sides recognized the considerable costs and risks facing the members of the Settlement Class in the pursuit of their Claims.

A settlement agreement is particularly favorable when it “avoids the cost of litigating class status – often a complex litigation within itself.” *In re General Motors*, 55 F.3d at 784. In entering into the negotiations that produced the settlement at issue here, both sides recognized the difficulty of the class certification issue in a contested case. Travelers believes there are strong arguments that the Settlement Class members’ Claims are not appropriate for certification as a litigation class, and the Settlement Class Representative of course believes the opposite. By resolving the individualized issues without the need for individualized litigation, the proposed settlement avoids the contentious issue of whether a class may be certified for litigation purposes.

- b. State of the Litigation: Some of the Filed Actions have been pending for over three years. During that time (and indeed even well before the instant case was brought), Class Settlement Counsel engaged in discovery and investigation, and such work has generated significant information about the prospects for success in this litigation. On the other hand, although there has been extensive motion practice and the Parties have engaged in both formal and informal discovery to ensure that the settlement is fair, adequate and reasonable, there remains substantial litigation ahead, including additional motion practice, trial preparation, and the trial itself. Indeed, litigation of this complex case through trial would require millions of dollars in expenses. Given that the Parties have undertaken sufficient discovery to ensure the fairness, reasonableness, and adequacy of the settlement, expenditure of these resources would be wasteful and unnecessary. The state of the litigation therefore weighs in favor of approval of the settlement.

- c. Quality of Counsel: Class Settlement Counsel are very well-qualified and experienced. Class Settlement Counsel regularly engage in complex litigation similar to the present case and have dedicated substantial resources to the prosecution of this matter. The experience and skill of all counsel involved weighs in favor of final approval of this settlement.
- d. Conduct of Negotiations: Class Settlement Counsel and Travelers' Counsel have engaged in extensive, arms-length negotiations, facilitated by the Louisiana Attorney General's Office. The complexity and duration of these negotiations weighs in favor of final approval of this settlement.
- e. Case Prospects, Including Risk, Complexity, Expense and Duration: The Filed Actions have the potential to impose enormous litigation costs on all of the Parties. Indeed, although the ultimate result of motions for class certification and trial cannot be foreseen, absent a settlement, an expensive, complex and time-consuming process is assured. In light of the high stakes involved, a lengthy and costly appeal is certain to follow regardless of the outcome at trial. Thus, the complexity, expense and likely duration of the litigation weighs heavily in favor of final approval of this settlement.

18. In sum, this Court should preliminarily certify the Settlement Class and approve the settlement as fair and reasonable under Rule 23(e). Notice will then be sent to the members of the Settlement Class, and the Court may conduct a Final Approval Hearing to determine for finalization purposes the propriety of certification and the settlement's "fairness, adequacy, and reasonableness," respectively. *Newby*, 394 F.3d at 301. At the hearing, any Class Member who timely and properly objects to any issue will have an opportunity to be heard before final judgment is entered.

19. In this regard, the Parties move the Court to authorize them to provide notice to all members of the Settlement Class and approve the form of the notice to the Settlement Class and the manner such notice is to be given. To assure that the members of the Settlement Class

are fully informed, *inter alia*, of this proposed settlement, their right to retain counsel, their right to review the proposed settlement documents, their right to object to class certification, their right to object to the approval of the proposed settlement, the means whereby they may make their objections, and their right to be heard thereon at the Final Approval Hearing, the Parties have proposed that Settlement Class Notice in the form set forth in Exhibits D and E to this Joint Motion be approved by the Court.

20. Federal Rule of Civil Procedure 23(e)(1) requires “notice in a reasonable manner” must be sent “to all class members who would be bound by the proposal.” Pursuant to the Federal Rules of Civil Procedure 23(e)(1) and (c)(2)(B), Class Settlement Counsel will, by mail, provide all those members of the Settlement Class who can be identified by reasonable means with a copy of the detailed Settlement Notice (Exhibit D). Notice to members of the Settlement Class shall also be given by publication in national print media of the Summary Notice (Exhibit E) and by publication on the website established by Class Settlement Counsel or the Notice Agent. In addition, all members of the Settlement Class shall be directed to review a copy of the detailed Settlement Notice, which will be published on the website and will be mailed to any member of the Settlement Class upon request.

21. The notice plan will include providing notice to the “appropriate State official” and “appropriate Federal official” pursuant to 28 U.S.C. § 1715, attached herein as Exhibit F.

22. The notice plan will include the following opt-out procedure: Settlement Class Members must submit a letter requesting exclusion to the Notice Administrator postmarked no later than 45 days after the last notice is provided, whether by mail or by publication. The request must be signed and must include the class member’s name, address, and policy number. The request must also state: “I/we request that I/we be excluded from the Settlement in *Arthur v. Travelers*, Case No. 09-7332.” Travelers reserves the right to rescind the settlement in accordance with the parameters specified in the Supplemental Agreement filed by the parties under seal on February ___, 2010.

OTHER REQUESTED RELIEF

23. Class Settlement Counsel moves the Court to appoint the Gloria Arthur as provisional representative of the Settlement Class.
24. The Parties also request additional relief in furtherance of the foregoing including, but not limited to:
- a. The approval of Calvin C. Fayard Jr., N. Frank Elliot III, Frank C. Dudenhefer, Wanda Edwards, and Joseph M. Bruno to serve as Class Settlement Counsel;
 - b. Indefinite extension of the date by which Travelers must Answer the Amended Consolidated Complaint in this action, pending the outcome of the settlement approval process;
 - c. The setting of a Final Approval Hearing and related deadlines; and
 - d. Related relief, all as more fully set forth in: (1) the [Proposed] Preliminary Approval and Notice Order; and (2) the [Proposed] Final Order and Judgment Certifying the Class for Purposes of Settlement, Approving of Class Action Settlement, and Dismissing the Action With Prejudice, attached as Exhibit D and Exhibit I to the Class Settlement Agreement, which form of orders are hereby incorporated by reference as if copied *in extenso* herein.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs and Travelers pray that, after due proceedings are had, the Court grant their Joint Motion Seeking Entry of Preliminary Approval Order Certifying Settlement Class, Approving Proposed Settlement, and Granting Related Relief, and the Court accordingly enter a **Preliminary Approval and Notice Order** in substantially the form set forth in Exhibit D to the Class Settlement Agreement, including provision of the following relief:

- i. Preliminary certification of the Settlement Class as defined in paragraph 7, above, with the express reservation to the Settlement Class of all objections to certification of the Settlement Class and the Settlement Agreement and Release;
- ii. Preliminary approval of the Settlement Agreement and Release, subject to both notice to the Settlement Class and a Final Approval Hearing, as fair and reasonable under Federal Rule of Civil Procedure 23(e);
- iii. Approval of Gloria Arthur to serve as provisional representatives for the Settlement Class;
- iv. Approval of Calvin C. Fayard Jr., N. Frank Elliot III, Frank C. Dudenhefer, Wanda Edwards, and Joseph M. Bruno to serve as Class Settlement Counsel; and
- v. Approval of the form and content of the Detailed and Summary Notices as well as the method for notifying putative Class Members as satisfying the requirements of due process and constituting the best notice practicable under the circumstances, and constituting due and sufficient notice to all potential members of the Settlement Class.

The Parties further request that the Court schedule the Final Approval Hearing, to be conducted in the United States District Court for the Eastern District of Louisiana, Section "S", New Orleans, Louisiana. The parties request that the Court set a deadline of not less than the 40th calendar day after the Notice Date, for objections to (a) whether the Settlement Class should be certified pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure; (b) whether the proposed settlement should be given approval as fair, reasonable and adequate, and (c) whether the Final Order and Judgment shall be entered. The Parties request that the Final Approval Hearing be scheduled not less than 45 calendar days after the objection deadline.

Thereafter, after due notice and an opportunity for all class members and parties in interest to object and be heard at the Final Approval Hearing, the Parties request that the Court enter a **Final Order and Judgment** in substantially the form set forth in Exhibit I to the Settlement Agreement and Release, providing the relief requested therein, including:

- i. Confirming the preliminary certification of the Settlement Class and certifying the Settlement Class for settlement purposes only, pursuant to the Settlement Agreement and Release as well as Federal Rule of Civil Procedure 23(b)(3);
- ii. Entering final approval of the Settlement Agreement and Release and the settlement contained therein, including (a) any amendments or corrections thereto, and (b) all attached exhibits pursuant to applicable law, including Federal Rule of Civil Procedure 23(a), (b)(3), and (e);
- iii. Confirming the preliminary approval of the Class Representatives and Class Counsel; and
- iv. Overruling the objections made to certification of the Settlement Class and/or approval of the Settlement Agreement and Release.

The parties further request all additional relief as set forth in the [Proposed] Preliminary approval and Notice Order, in the [Proposed] Final Order and Judgment, and/or as requested herein, together with all relief warranted by law or equity.

Dated: March 2, 2010

Respectfully submitted,

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